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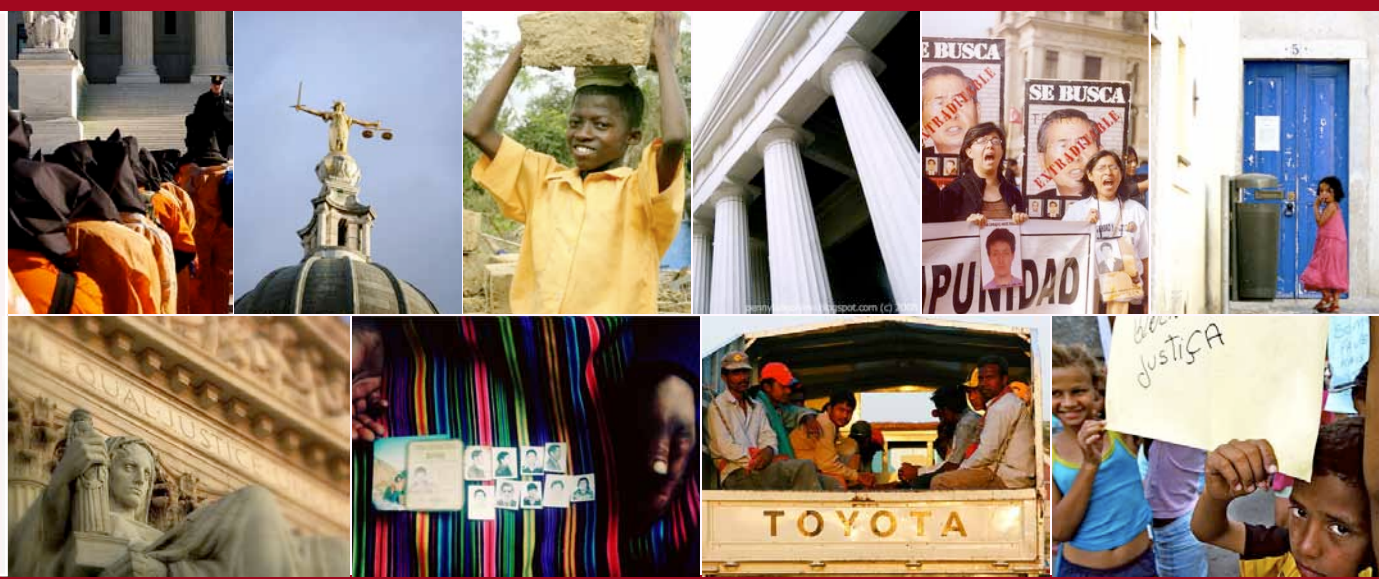

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The Trial of Fujimori: Implications for US Policy, Global Justice and Democracy

Juan E. Méndez

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This working paper series is based on an international symposium, "Human Rights Tribunals in Latin America: The Fujimori Trial in Comparative Perspective." Select panelists have prepared incisive analyses of new trends in transitional justice in the region. The conference was organized by the Center for Global Studies at George Mason University, the Washington Office on Latin America, and the Instituto de Defensa Legal on October 2, 2008 in Washington, D.C., and funded with the generous support of the Open Society Institute.

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FOREWORD

Over the course of the past year, former Peruvian president Alberto Fujimori has sat, three days a week, in front of a panel of three Supreme Court justices tasked with determining his responsibility in a series of grave human rights violations committed during his ten-year administration (1990-2000).

Few Peruvians imagined such a trial was ever possible. Fujimori fled Peru in November 2000, amidst explosive corruption scandals. Upon his arrival in Japan, the birthplace of his parents, he was provided protection by top political authorities and was quickly granted Japanese citizenship, effectively shielding him from the risk of extradition to Peru.

But events took a new turn in November 2005, when Fujimori left his safe haven in Japan for Chile. In what international law scholar Naomi Roht-Arriaza has referred to as "the age of human rights," this was a critical miscalculation. Instead of launching a bid for the presidency in Peru's 2006 elections, Fujimori instead found himself under arrest in Chile. The Peruvian state prepared an extradition request, and in September 2007, after a long and complex process, the Chilean Supreme Court approved Fujimori's extradition. Within days the former president was returned to Peru, and on December 10, 2007, his trial for human rights violations began.

Domestic prosecutions of heads of state for human rights crimes are extremely rare in any country. And Peru may seem an especially unlikely place for such a high-profile trial to unfold. Fujimori remains quite popular among certain segments of the Peruvian public. The judiciary historically has been held in low esteem by Peruvian citizens. Key figures in the present-day political establishment, including the current president, vice-president, and key opposition figures, have their own reasons for being wary of possible prosecutions for human rights violations in the future. Yet, in a striking display of impartiality and professionalism, the tribunal overseeing the prosecution of the former president has been a model of fairness, fully protecting the due process rights of the accused. Regardless of the outcome, the trial of Fujimori demonstrates that with sufficient political will, domestic tribunals can prosecute high-level public officials who commit or order the commission of grave human rights violations.

Impunity has long characterized Latin American societies emerging from years of authoritarian rule and/or internal conflict, but today numerous Latin American countries are making great strides in bringing to justice those who committed or ordered the commission of grave violations of human rights. To highlight and analyze this welcome development, the Center for Global Studies at George Mason University, the Washington Office on Latin America (WOLA) and the Instituto de Defensa Legal (IDL) joined forces to draw attention to the Fujimori trial, as well as the other human rights tribunals underway in parts of Latin America today.

Mason, WOLA and IDL organized a conference series to examine human rights trials in Latin America. The first conference, entitled Los culpables por violación de derechos

humanos, took place in Lima, Peru, June 25-26, 2008. It convened key experts in international human rights law, as well as judges, lawyers, scholars and human rights activists from across the region, to analyze the Fujimori trial in comparative perspective. (A rapporteur's report for this conference is available online at: <www.justiciaviva.org.pe/nuevos/2008/agosto/07/seminario_culpables.pdf >.)

A second conference took place in Washington, D.C., on October 2, 2008, at the Carnegie Endowment for International Peace. Several participants from the Lima conference were joined by human rights activists, lawyers, judges and scholars from across the region to examine the Fujimori trial as well as other human rights tribunals underway in Argentina, Chile, Uruguay, and Guatemala. The result is a rich multidisciplinary look at a new moment in Latin America's history, in which impunity and forgetting is giving way to processes of accounting for crimes of the past through domestic tribunals, one piece of a broader process of coping with the difficult legacies of the authoritarian and violent past. (A rapporteur's report for this conference is available online at: <http://cgs.gmu.edu/publications/hjd/OSI2009RappReport.pdf>.)

***T**his working paper series is based on the Washington conference on human rights tribunals in Latin America. Select panelists have prepared incisive analyses of this new trend in transitional justice in the region. Several of the papers analyze the Fujimori trial, offering legal, activist, and scholarly perspectives on the trial of Peru's former head of state. Others examine trends in other countries, including Argentina, Chile, and Guatemala, that have also sought to promote prosecutions for human rights violations. Collectively the papers reveal the strides Latin America has made in its efforts to combat impunity and promote the rule of law and democratic governance. Though obstacles remain, as several conference participants indicated, these efforts represent a key departure from the past, and merit careful scrutiny by policymakers, scholars, and the human rights community.*

We would like to especially thank the Latin American Program at Open Society Institute, in particular Victoria Wigodsky, which made this conference series as well as the publication of this paper series possible. We also thank Arnaud Kurze at CGS/Mason for his capable assistance during all stages of this project and in particular of the preparation of this working paper series.

Jo-Marie Burt
Center for Global Studies, George Mason University
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The Trial of Fujimori: Implications for US Policy, Global Justice and Democracy

By
Juan E. Méndez*

Peru's contributions to justice, at home and abroad, are not limited to the trial of Alberto Fujimori. The work of the Truth and Reconciliation Commission and especially its ground-breaking report issued five years ago stand out as a major example of a society coming to grips with its legacy of human rights violations through a fair, honest, transparent process that forces a reckoning with the root causes of the tragic violence of the 1980s and 1990s. Another way in which Peru is an example worth emulating is in the State's disposition to support the Inter-American system of human rights protection, and to comply with its decisions and rulings applicable to Peru. During the government of Valentín Paniagua, Peru entered into friendly settlement procedures with the petitioners on all of the cases then pending before the Inter-American Commission on Human Rights.[1] The Paniagua government also restated Peru's acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights, in compliance with the Court's ruling that Fujimori's withdrawal of Peru's consent was invalid under the American Convention on Human Rights (IACtHR, 1999). This commitment to the integrity of the system of protection was not the particular inclination of a political party that happened to occupy the Presidency at the beginning of this decade; it was shared by other branches of the State, as exemplified by the Supreme Court's decision to reopen the *Barrios Altos* criminal case in order to comply with the Inter-American Court's ruling of March 2001 (IACtHR, 2001). That is why it would be a major setback for Peru's standing in the Americas if the current government were to heed the ill-advised voices in the country that are again calling for a withdrawal from the system in protest for the ruling in the *Canto Grande* case (IACtHR, 2006).

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* President, International Center for Transitional Justice. I am indebted to my colleagues Michael Reed, Javier Ciurlizza, Eduardo González, Luis Filippini and Susan Kemp for their contributions to this paper.

[1] Proposal submitted by then Minister of Justice Diego García Sayán to the Inter-American Commission on Human Rights during its 110th. Session, February 22, 2001.

In the realm of reparations to the victims of human rights abuse, Peru is also making some encouraging strides with the creation of Multi-Sector High Level Commission (CMAN) and the preliminary actions it has undertaken to establish the universe of victims entitled to compensation. Similarly encouraging is the commitment of courts and prosecutors to follow the recommendations of the TRC and "judicialize" the cases arising from the evidence preliminarily gathered through the TRC's research. In spite of all these encouraging signs, there is no doubt that these advances are still on shaky grounds in Peru, and that the possibility of setbacks is very real. Unfortunately, Peru is not yet at a stage in which it can be said that commitment to human rights and to accountability for their violation is a "State policy," adhered to and supported by all political parties and sectors of society.

In that context, the trial of Fujimori is historic in many ways but especially because so much hinges on its success. In this regard, success is not whether Fujimori is found guilty; success will be measured by whether such a complex and politically-charged trial can be conducted in full compliance with the highest standards of due process and fair trial guarantees, and at the same time reach a convincing and undeniable statement of the relevant facts.

HISTORICAL SIGNIFICANCE OF THE TRIAL

It is definitely unprecedented that the defendant on trial is a former elected Head of State. In Latin America, General Jorge Rafael Videla was tried and convicted and pardoned and is on trial again in Argentina; Bordaberry is under prosecution in Uruguay, and Pinochet did not die an innocent man, as at least some charges were progressing against him when he died. But all three were dictators who grabbed power in *coups d'etat*, while Fujimori exercised power dictatorially but he had arrived at the Presidency through elections. The democratic principle of accountability is therefore being put in practice in Peru through a trial that will undoubtedly become a historical landmark. In this manner, Peru is making a contribution to a trend in international law that is transforming our understanding of human rights and accountability. Fujimori's trial is as significant as those of Charles Taylor, Slobodan Milosevic and Omar Al-Bashir. And yet in all three of those cases the trials took place or will take place under the jurisdiction of courts created by the international community to fill in for the unwillingness or inability of domestic courts to live up to their duties. The stated purpose of those courts is, in fact, to help States regain that ability and that will. In Peru, the domestic jurisdiction is fulfilling that obligation and doing so without support from the international community. This is such an

important development that it is astounding that the Fujimori trial does not get the attention it deserves from international public opinion.

There is another aspect of the Fujimori trial that is also unprecedented and similarly does not get the international attention it merits: that the trial is possible because the Supreme Court of Chile extradited him to face charges in Peru. Cooperation between the judiciaries of different countries to prevent and punish crime has a long and honorable tradition in Latin America as in many other regions; but that it happened in a case of this political significance is particularly noteworthy. In addition, it took place in a country with a tradition of judicial independence and through a court exercising a very rigorous examination of the request from the perspective of the rights of the defendant to due process of law.

Most importantly, the Peruvian judiciary is demonstrating to the world that a trial of this nature is possible without allowing its political significance to undermine the court's commitment to due process of law. The trial panel—*Sala Penal Especial* of the Peruvian Supreme Court—is scrupulously organizing the proceedings so as to respect the rights of the defendant to a fair trial, while at the same time it allows participation by the victims under their own right of access to justice. Of course, our judgment on this score must wait until the trial is over and we can fully appreciate every aspect of it, including the way the Court interprets the evidence and applies the law. But the trial has gone on now for several months, and up until now it is possible to say that the panel hearing the case has conducted the multiple sessions in an exemplary fashion from that perspective. In fact, the lead counsel in Fujimori's defense team, Mr. Nakasaki, has said that his client has the benefit of a panel formed by the best and most independent judges in Peru.[2] Almost in the same sentence, Mr. Nakasaki complained that the Peruvian judiciary in general has traditionally been the subject of political manipulation, a curious statement from the lawyer of a man who fired the members of the Supreme Court in the course of his "self-coup" of April 5, 1992, then manipulated the appointment of all judges in the following years, and finally closed down the Constitutional Court when it rendered a judgment he did not like.

AN INTRICATE CASE: COPING WITH MULTIPLE FACETS

The fact that so far the Peruvian judiciary has achieved a remarkable result in this trial should not obscure the fact that the criminal case against Fujimori is complex and hard to prosecute and adjudicate. Such is the nature of "system crimes" that involve multiple incidents, multiple victims and multiple

[2] Radio interview, August 20, 2008, at which the author was also interviewed.

perpetrators acting in a web of relationships of supervision, control and subordination. Similar difficulties have been encountered by the international tribunals for the Former Yugoslavia and Rwanda, and by the mixed or hybrid efforts in Timor Leste, Sierra Leone and Kosovo. The same is true of the complex investigations already carried out by the Office of the Prosecutor of the International Criminal Court in the Democratic Republic of Congo, in Northern Uganda and in Darfur, and will be equally true when those cases come to trial. "System crimes" present enormous challenges to investigators, prosecutors and judges, but they are here to stay and it is important that we learn lessons from how those challenges have been confronted. Of course, "system crimes" are not limited to genocide, crimes against humanity or war crimes; similar complexities are encountered in the punishment of drug traffic offenses, illegal gambling, racketeering and other forms of organized crime.

A common thread linking various forms of system crimes is the risk that concentrating on trigger-men and low-level perpetrators can leave behind a huge impunity gap as to the masterminds and organizers of the crime. By definition, the roles of those willing the crimes to take place are mired in plausible deniability, the secrecy or the clandestine nature of the structures utilized, and the dearth of documentary evidence about the substance of orders given. For that reason, prosecution of system crimes presents serious evidentiary difficulties. It is rare—though certainly not impossible – for participants in the crime to testify for the prosecution. In some cases, loyalty to institutions and chiefs prevents it. More often, however, the reasons for silence has to do with expectations of protection and immunity, and even with the understanding that the clandestine structure retains serious power and can still enforce an implicit code of silence. Still, it is legitimate to establish certain facts and to draw inferences from them, particularly when there is ample reason to presume knowledge of the actions and a legal obligation to act in their regard in a certain way, and the absence of such action. On the other hand, the legitimacy of the trial hinges on strict adherence to fundamental principles of criminal responsibility, and these demand that we avoid even the appearance of a theory of "strict liability" (appropriate for civil damages but not for criminal law) solely because of the defendant's investiture.

Criminal liability, in any case, can be constructed over a foundation of proven facts, even if the evidence for the individual defendant's participation is circumstantial. Circumstantial evidence, inferences and presumptions are not incompatible with the high burden of proof and evidentiary standards that due process of law requires for criminal conviction. Fujimori is accused of committing the massacres of Barrios Altos and La Cantuta, and the abduction of Gustavo Gorriti and Samuel Dyer through the actions of others. This form of authorship of the crime – in Peruvian law the terminology is *autoría mediata* -- is

not unusual; it exists in every criminal code around the world. It is also easy for lay persons to apprehend that life does offer examples of murders committed through the actions of others, as through hired guns, to give one simple example.

THEORETICAL GROUNDWORK OF THE JUDICIAL PROCESS IN PERSPECTIVE

In analyzing and weighing the evidence, the Lima court can resort to several theories or grounds for liability under the *autoría mediata* principle, specifically as it relates to the various forms of liability for one who commits a crime through the intervention of others.[3]

PLANNING

This consists of designing the commission of a crime both in the preparatory stages and in the execution. The act of planning by itself, without any other action or omission is sufficient in and of itself to determine individual criminal liability (ICTY, 2001a, para. 601 and ICTR, 1998, para. 480).

COMMISSION

Commission is the direct perpetration of the crime or the omission of an action that is required (ICTY, 1999, para. 188, 2001b, para. 390, 2001a, ibid. and 2002a, para. 62). International doctrine does contemplate the possibility of co-authors or co-perpetrators; there can be more than one perpetrator as long as the behavior of each one fulfills the elements of the crime (ICTY, 2001b, ibid. and 2001c, para. 251) In the *Lubanga* case, the International Criminal Court (ICC) stated that when the totality of the coordinated contributions of a group of persons results in the realization of the objective elements of a crime, any person who contributed can be held responsible for the contributions of everyone else and, as such, is an author of the crime.[4] According to the ICTR, this reasoning is known in similar fashion in many domestic jurisdictions. (ICTR, 2001, 110-1).

In determining who the perpetrators are, the ICC adopts the concept of "control over the event." In that fashion, authors include all persons who, even if they are physically removed from the crime scene, control or mastermind its commission. There can also be a joint control shared by several persons when the contribution of each one is essential to the commission of the act (Ambos, 1999, 479).

[3] The following paragraphs and footnotes are drawn from (ICTJ, 2008).
[4] See the case of the International Criminal Court, *Prosecutor v Thomas Lubanga*, para. 326.

Article 25(3) (a) of the Rome Statute for an International Criminal Court contemplates the commission of a crime by means of another person. It includes the perpetration through an organized power apparatus, as stated by the Appellate Chamber common to the ICTY and ICTR (ICTR, 2001, 111-3). In the Rome Statute, the superior is responsible even if the direct perpetrator is not.[5] This is also true for those scenarios in which the identity of the direct perpetrator cannot be established.

ORDERING, INDUCING AND INSTIGATING

Criminal liability is present when a person who occupies a position of authority issues an order to have another person commit a crime (ICTR, 1998, para. 483). This principle had already been accepted in the Nuremberg judgments with regards to persons who had ordered atrocities against civilians or had approved measures that resulted in those atrocities (IMT, 1946 and Green, 1995). It is not necessary for the order to be in writing, not for it to be directly transmitted to the direct perpetrator. It can be explicit or implicit and it can be proven through circumstantial evidence. The state of mind of the direct perpetrator is irrelevant; what matters is the state of mind of the superior who gives the order.

A person induces or instigates another to commit a crime when he determines the other to act in that fashion; this is a form of liability as accessory to the fact, in which the behavior of the instigator or inducer causes the behavior of the executor. The instigator's conduct can be explicit or implicit; it does not need to be a *conditio sine qua non* of the other's action, and it can consist of an omission (ICTY, 2001d, para. 387, 2002b, para. 280, 2001b, para. 601 and ITCR, 1998, para. 482).

COLLABORATION OR ASSISTANCE

This form of accessory liability is based on customary international law, and it presupposes a substantial contribution to the commission of the crime.[6] It can be an omission, and it includes assistance provided before, during or after the commission of the crime. It can even take place at a great geographic distance from the crime scene, and it may include aspects like the provision of instruments for its commission (ICTY, 1998a, para. 190-249). The collaborator

[5] Art. 25(3)(a)

[6] See ICTY, *Prosecutor v Ojdanic,* Jurisdiction, para. 34 et seq, affirmed in (ICTY 2003a, para. 29 and 2006, para. 100).

must provide forms of moral or material support that have a substantial effect over the commission of the crime, and must be aware that his acts will assist in the commission of the crime.

Another variety of accessory criminal liability is the participation in a joint criminal enterprise, which consists of contributing in some fashion to the commission or attempted commission of a crime by a group of persons who have a common objective. The concept is primarily based on the common mental state of the perpetrators (a subjective criterion), while the scenarios of co-authorship and of commission by means of another depend instead on actual control over the criminal act (an objective standard) (ICTY 1998a, para 249 and 2002b, para. 288). The elements of a joint criminal enterprise are: the existence of a group of persons, the existence of a common plan that involves the commission of a crime, and the participation of the defendant in the design, the assistance or the contribution to the execution of the plan.

COMMAND RESPONSIBILITY

The criminal liability of a superior for the crimes of his subordinates has a long historical trajectory originating in the 15th century.[7] It establishes that the commander has indirect responsibility if he fails to prevent or to punish a crime. The doctrine is grounded on the power of the superior to control his subordinates. The commander has a duty to exercise this power to prevent and punish offenses by his subordinates, and if he fails to exercise it diligently, he will be criminally punished.[8] It only applies if the superior has a legal obligation to act. Military chiefs have the duty to prevent and punish certain crimes committed by their subordinates. [9] The same doctrine can be applicable to *civilian leaders* under certain circumstances.[10]

It is also quite legitimate to hold two or more superiors responsible for the same crime committed by a single subordinate (ICTY, 2002b, para. 303, 2002c, para 93).

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[7] *Ordinance* of King Charles VII of France in 1439 in Orleáns; see (Meron, 1998). More recently, Nuremberg trial of the *Frick* case (knowledge of massacres and inaction to stop them), *inter alia;* The *High Command* Trial (under US jurisdiction post-Nuremberg) *In re Von Leeb et al* (12 United Nations War Crimes Commission–UNWCC, 1948); Tokyo Tribunal, *Yamashita* (4 UNWCC).

[8] Cf. ICTY, *Celebici* appellate decision, para. 97.

[9] Protocol I Additional to the Geneva Conventions, Article 87.

[10] Rome Statute, Art. 28(b)(i). This norm contemplates different degrees of the subjective element for civilian and military superiors, in establishing that civilian leaders are responsible only if they *knew* or had information and neglected to act. For a military commander, in contrast, the standard is that he knew *or should have known*. Jurists debate whether the more lenient standard for civilians reflects customary international law or a Rome Statute departure from it.

Three requirements are necessary to establish the responsibility of commanders (ICTY, 1998b, para. 346):

a) A relationship of subordination between the defendant and the perpetrator of the crime. This relationship need not be direct or permanent, and it applies also to the command of informal structures. In other words, it applies to *de facto* as well as *de jure* authority, because the key question is the degree of *effective control* that the superior can exercise, i.e., the actual ability to prevent and punish crimes (ICTY, 1998b, para. 266, 2002b, para. 30-302, 2001b, para. 419-424).

b) The superior must have known (or should have known) that the subordinate committed or was about to commit the crime (ICTY, 2002b and 2001d).

c) The superior failed to adopt the necessary and reasonable measures to prevent the acts of the subordinate or to punish the crime (ICTY, 1999). [11]

Actual knowledge of the relevant facts by the defendant can be deducted from the presence of indicia or circumstantial evidence. A problem may arise when there is no evidence that he actually possessed the relevant information. International law on the matter includes a duty on the part of the military commander to keep himself informed about his subordinates' activities; ignorance is not an excuse unless due diligence is shown.[12] As stated elsewhere in this paper, command responsibility is not to be equated with the civil law concept of *strict liability*; the mere hierarchical position of superior-subordinate does not by itself constitute guilt, although it is definitely relevant as significant indicia that he actually knew about the crimes committed by the subordinate (ICTY, 2002b, para. 308).

The indicia that courts have utilized to determine whether a commander was aware of his subordinate's actions include: i) the number of illegal actions; ii) the nature of the actions; iii) the period of time during which they took place; iv) quantity and type of troops involved; v) the logistics used; vi) the geographic location of the actions; vii) the extension in time of the actions; viii) the tactical pace of operations; ix) the similar *modus operandi* of illegal operations, and x) officers and other persons involved. Temporal and geographic factors are taken

[11] The Rome Statute stipulates this requirement for both civilian and military leaders (Arts. 28(b) and 28(a) respectively).
[12] See *United States v. Wilhelm List et al.,* Vol. XI, TWC, 1230, 1271.

into account, so that the farthest the commander is from the crime scene, the more indicia will be required to demonstrate his actual knowledge. Conversely, if the acts took place in geographic or temporal proximity to the commander, this fact alone is strongly indicative that he actually knew about them, especially if the crimes were committed repeatedly (ICTY, 2003b, para 72, I.[13]

THE REQUISITE INTENT OR SUBJECTIVE ELEMENT

According to international jurisprudence in this matter, the prosecution needs to prove that the defendant who did not physically commit the crime did however intend for the crime to take place (ICTY, 200b, para. 278, 2001d, para. 386)—unless, of course, the relevant crime requires a special kind of requisite intent, as in genocide, for example. This requirement includes both aspects of the matter: knowledge and volition.[14]

International law doctrine applies the traditional categories of direct intent (*dolus*) when the person knows that his actions or omissions will result in the objective elements of the offense and still acts or omits acting with the concrete intention of producing those objective elements, or in awareness that such elements will be the necessary result of his actions or omissions. In addition, a person can be found guilty under the category of *dolus eventualis*, when he is aware of the risk that the objective elements can take place and still acts or omits acting. Such consent to the eventual consequences of one's actions can be inferred from the evidence that the defendant was conscious of the high probability that a criminal act would occur as a result of his behavior in the normal course of events and he nevertheless acted or failed to act (ICTY, 1999, para. 228, 2001d, para. 398).[15]

CONCLUSION

My ICTJ colleagues and I have been closely observing the trial. On my own visits to Lima, I was struck by how the media and the public tended to react to each session with the impatience of one who expects a testimonial revelation that will operate as a "smoking gun" establishing Fujimori's guilt beyond the need of anything further. Fujimori partisans symmetrically seem to ponder each new

[13] See also *Aleksovski,* Trial Judgment, para 80.

[14] The formula applied by the Rome Statute, Art. 30 (2)(b), refers to the awareness either of the circumstances or of the results, i.e., that the person is conscious that a circumstance exists or that a consequence will occur in the normal course of events.

[15] Regarding massacres see *Delalic (Mucic) et al.* (IT-96-21) "Celebici" Trial Chamber Judgment, para. 435; *Kvočka et al.* (IT-98-30/1) "Omarska, Keraterm and Trnopolje Camps" 2 November 2001, para. 251.

testimony from the perspective of keeping a sort of score as if the trial was a soccer game played over the length of a year. This may be understandable given the implications of the trial for the political fortunes in Peru in the short term; but it is regrettable that the commentary over the trial is reduced to quite pedestrian matters. It is a pity that—with some honorable exceptions—the trial is reported as a television court room drama, with little attention to the admirable efforts to uphold the rule of law and due process that the court is engaged in, to the tragic nature of the events unfolding in court, or to the suffering of victims whose plight has been ignored for far too long.

As with other transcendental judgments on accountability for mass atrocities, some will expect the verdict to settle the differences between conflicting interpretations of recent Peruvian history. In my view, the final decision should not be expected to do that; interpretations of history should continue over how serious a threat was posed to the State and society by the violence of Sendero Luminoso and the MRTA. There must also be further discussion about what the appropriate response should have been to defend Peruvian institutions from that onslaught. But after the trial, and also after the report of the TRC, it should be expected that those discussion should proceed over a series of undeniable facts. Whether Alberto Fujimori is ultimately found personally responsible for the commission of crimes, these proceedings will demonstrate some of those facts, the existence of which was denied or disguised at the time. It is now undeniable that a clandestine group named *Colina* was organized within the State military and security apparatus; that the Colina group was created for the purpose of conducting "dirty war" methods against those perceived as undermining the authority of the State, and that those methods were to be denied or at least not attributed to the State. It is clear that the victims of Barrios Altos and La Cantuta were killed when they were defenseless and vulnerable. Whether any one of them was responsible for crimes related to the insurgency is something that we will never know because no attempt was made to investigate, prosecute and punish them under the law, as was the duty of government to do. Instead, the Colina group, acting under the inspiration and guidance of its masters, decided to apply a vigilante form of justice and eliminate them with extreme cruelty. It is also proven beyond denial that the method included an attempt to disguise and hide the very existence of the crimes, including the human remains of the victims in the case of La Cantuta, and to hide the true identity of the perpetrators. It has also been extensively established that the government authorities who should have investigated these crimes chose instead to hide and deny them and to attribute them to other perpetrators. In addition, honest observers cannot deny that, when a few brave journalists and magistrates did their duty and started to pierce the veil of secrecy, the power of the State was used to interfere with judicial investigations and to enact legislation to ensure impunity and deniability.

In that sense, the trial of Alberto Fujimori is already a success, and one that follows in the honorable Peruvian tradition of parliamentary inquiries into the massacres of El Frontón and Lurigancho in the 1980s, the exemplary revelations of the Truth and Reconciliation Commission in 2003, the seminal reports on Peru by the Inter-American Commission on Human Rights and the landmark decisions of the Inter-American Court of Human Rights in several cases related to human rights violations in Peru.

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